

7/14/82

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HL 0201

08310063

EPA



SEMS DocID

644665

James A. Rogers, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
919 18th Street, N.W.  
Washington, DC 20006

Superfund Records Center

SITE: PicilloBREAK: 11.9

OTHER: \_\_\_\_\_

Re: Picillo Hazardous Waste Site

Dear Jim:

This is a follow-up to our meeting of June 30, 1982 at which we discussed the Picillo Superfund site and, in particular, Hydron Laboratories' role in that situation as it relates to other potentially responsible parties. This letter sets out, in general, EPA's planned investigatory and enforcement activities at the Picillo site and also our position with regard to the scope of liability of responsible parties for response actions at the site.

As we discussed at the June 30 meeting, EPA's investigation into the existence of parties who may be responsible for the disposal of wastes at the Picillo site did not end with the issuance of a CERCLA "notice letter" to Hydron Laboratories last December. Our investigation continues. The names of numerous companies have been identified during barrel excavation activities at the the site. We are currently in the process of making information inquiries of these companies to better define their role in the disposal of hazardous substances at the Picillo site. Based on the answers to these inquiries and such other information as is available to EPA, we will make a determination as to which companies, if any, may be potentially responsible parties and so inform them (i.e., issue notice letters).

With regard to the scope of liability of responsible parties for response actions at the Picillo site, you expressed the concern at our meeting that Hydron Laboratories would be prejudiced by the timing of EPA notice letter issuance. Specifically, I understand your concern to be that parties cannot be held liable for response costs incurred by the federal government prior to the government's informing those companies that they are potentially responsible parties, and, therefore, that Hydron could be held liable for a larger set of expenses than could a company which received a later notice letter. As I stated at our meeting, and as I now reaffirm, the Agency does not subscribe to the same interpretation of the legal impact of notice letter issuance as you presented and, thus, I believe your concerns are not well founded. As discussed below, the interpretation you presented is particularly impractical in the Picillo situation.

## CONCURRENCES

SYMBOL	IA6	IA6	IA6	IA6	IA6	IA6	IA6
SURNAME	Blumstein	Blumstein	Silverman	Mach	Mach	Mach	Mach
DATE	7/13/82	7/14/82	7-15-82	7/14/82	7/16	7/19/82	

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

08310064

EPA consistently has maintained that a notice letter is not a legal pre-condition for cost recovery. Section 107 of CERCLA, which specifies that generators, transporters, and site owners and operators "shall be liable for ... all costs of removal or remedial action incurred by the United States government", makes no reference to notice letters or any other type of notice as a condition of liability. Section 107(a) of CERCLA provides that this liability for all costs exists "[n]otwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section ...." The defenses allowed by subsection (b) include only those related to acts of God, acts of war, and acts or omissions of a third party.

In the context of the Picillo site, to hold that a responsible party is not liable for costs incurred prior to its receiving a notice letter would make little sense. Most of the companies who may be categorized by EPA as responsible parties came to our attention only as a result of federally funded barrel excavation. It would be inequitable to relieve these companies of liability for the costs of the work that led to their discovery.

Hydron Laboratories happens to have been linked to the Picillo site earlier than certain other companies. EPA does not intend, however, to treat that fact as the one upon which we determine the extent of a company's liability. In fact, unless the Government's response costs can be traced to a specific party or precisely apportioned among several parties - an unlikely occurrence - the liability of each responsible party will be deemed joint and several. Thus, despite the timing of notice letter issuance or even in the absence of a notice letter, a responsible party normally will be held liable for all eligible response costs at a site. Of course, should an acceptable settlement be reached between the Government and a group of responsible parties, we would accept an apportionment of costs among the responsible parties which reflects their relative contributions to the problem, keeping in mind that a company's relative contribution cannot be based solely on quantity of waste.

I hope the above has been useful in explaining EPA's plans and positions with respect to the Picillo site and CERCLA enforcement in general. I also hope that this letter corrects the mistaken impression that EPA has concentrated all its enforcement efforts on Hydron Laboratories.

If you have any questions on the above, please contact me at (617)223-5424 or Joel Blumstein at (617)223-5470.

Sincerely,

IAE:JBLUMSTEIN/ea/7/13/82 disconferences							
Leslie Carothers							
SYMBOL	Deputy Regional Administrator						
SURNAME							
DATE							